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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 01/31/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 10-0925  
 )  
Appellee, ) DEPARTMENT D  
 )  
v. ) **MEMORANDUM DECISION**  
 )  
EVERTON CHANTILOU, ) (Not for Publication -  
 ) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
 )

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Appeal from the Superior Court in Maricopa County

Cause No. CR2009-006463-060DT

The Honorable Randall H. Warner, Judge

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

Tyrone Mitchell, P.C. Phoenix  
By Tyrone Mitchell  
Attorneys for Appellant

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G E M M I L L, Judge

¶1 Everton Chantilou appeals from his convictions for  
illegal conduct of an enterprise, conspiracy to commit sale or  
transportation of marijuana, use of wire communication in drug

related transaction, and sale or transportation of marijuana. Chantilou's counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Chantilou was afforded the opportunity to file a *pro se* supplemental brief but did not do so. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶3 In May 2009, Chantilou was indicted, along with multiple defendants, by an indictment that included a total of 170 counts and involved charges related to drug trafficking. Chantilou was indicted on count two, illegal control of an enterprise,<sup>1</sup> a class 3 felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-2312 (2010); count thirteen, conspiracy to commit sale or transportation of marijuana, a

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<sup>1</sup> The trial court later amended the indictment to allege that Chantilou was illegally conducting the enterprise, rather than illegally controlling the enterprise.

class 2 felony, in violation of A.R.S. §§ 13-3405 (2010) and 13-1003 (2010); count fourteen, use of wire communication or electronic communication in drug related transactions, a class 4 felony, in violation of A.R.S. § 13-3417; and count fifteen, sale or transportation of marijuana, a class 2 felony, in violation of A.R.S. § 13-3405.

¶14 Chantilou filed a motion to produce specific disclosure, motion to dismiss count one, a motion to dismiss count three, motion in limine, motion to preclude, a motion for clarification with a corresponding request for a stay, and motions to sever. Chantilou also joined in co-defendants' motions for limine. The court granted the motion to produce, denied the motion to dismiss count one as improperly pled, denied the motion to dismiss count three based on untimeliness, denied two of the motions in limine and granted two motions in limine, denied the motion to preclude, denied the motion for clarification regarding the denial of the motion to dismiss count one and denied the corresponding request for a stay, and denied the motions to sever.

¶15 The court held a *Dessureault* hearing in August 2010, in which a police officer witness made an in-courtroom identification of Chantilou. The court subsequently denied Chantilou's motion to suppress the in-court identification. The court also held a pretrial evidentiary hearing to rule on the

admissibility of the wiretapped call transcripts. A detective testified at the hearing, and the court found that certain wiretapped calls in late February 2009 were admissible.

¶6 The following facts were presented at trial. Detective S., a detective for the Maricopa County Attorney's Office, testified that in the winter of 2009 he received information about persons selling large quantities of marijuana in Maricopa County. An investigation was commenced into the organization using surveillance techniques and the interception of telephone calls. Detective S. was able to identify a residence, referred to as the Hughes' residence, as a transfer point for the marijuana transactions. Detectives obtained permission to intercept three telephone lines, two of which belonged to Jesus Apolinar. While telephone calls were being intercepted, surveillance officers were sent out to various locations. There were a total of 11,618 calls intercepted in the case, and Detective S. testified that he had reviewed all of the calls, reviewing some calls four or five times. Some of the calls were played for the jury, and the jury received written transcripts of the calls.

¶7 One call, on February 23, 2009, involved Apolinar and another person named Poz. Poz is eventually identified as Everton Chantilou, Appellant herein. In the telephone call, Apolinar "want[s] to take a picture of the family so he could

take it to Poz and then Poz says that's what I was calling [ ] you about." Detective S. testified that "a picture" is common terminology for a sample of marijuana, and the use of "family" is "a way of disguising [ ] what is going on."

¶18 Another call involved Apolinar talking to individuals named Guerro and Primo. In the call, the individuals discussed taking a sample to Poz, and the sample would be transferred from Primo and Guerro to Apolinar and then to Poz. Another call between Poz and Apolinar involved Apolinar "waiting for what he refers to as the family to arrive." A call on February 24, 2009, discussed a continuation of the transaction. A call on February 26, 2009, involved Apolinar asking if Poz wants "45 bucks, [which] would be 45 pounds or a total of 45 pounds, and . . . Poz says no, I want two engines."

¶19 A subsequent call between Apolinar and another individual, Amaya, clarified that the "two engines" meant \$200.00 or 200 pounds. In a later call, Apolinar told Poz that "it would be awhile before it is taken to his office which would be a house, . . . [but] the sources[ ] do have them and it's just going to be taken to the house," and Poz indicated that "he [is going to] call the boys [and] if he doesn't hear from [them, he is] going to check with somebody else." Apolinar called Amaya and stated "the black guy just called [ ] and he needs a response, otherwise he is going to look elsewhere." A later

call between Poz and Apolinar indicated that a "delivery is to be made at the office on 105th, that's the location of the Hughes' residence." Poz told Apolinar that he would like to have the whole 200 pounds to examine, and Apolinar stated he wanted Poz to "look at it first and make sure it's acceptable." Poz also told Apolinar he did not have a ride, and Apolinar indicated that he would have his cousin pick him up.

¶10 Apolinar was located in another state, and a subsequent call to Apolinar indicated that Poz was on his way to see the sample. Following conversations between Apolinar and Poz regarding the price, Apolinar called Amaya to tell him that "Poz got mad at the ticket," which Detective S. explained is a term for the price. Subsequent conversations on February 27, 2009, included more discussions between Poz and Apolinar regarding the sale, and Apolinar informed Amaya that Poz "still want[ed] to do it," and a time frame of 11:00 was established. A decision is made between Apolinar and Amaya that Amaya will pick-up Poz at the Jack in the Box at 99th Avenue and Lower Buckeye.

¶11 Later on February 27, the deal was delayed due to "somebody coming [in] from the airport," which Detective S. opined was related to the transportation of drug proceeds. Detective S. stated that Ricardo Brown flew into Phoenix on February 27, 2009, arriving approximately around 10 or 11

o'clock that morning, and rented a white van. Detective S. testified that surveillance officers were instructed to stay in the stationary position at the Jack in the Box, the Hughes residence, and at another residence on Orangewood. Later that same day, Poz requested that Amaya pick him up, as he was located at the Ross store in the same strip mall as the Jack in the Box. Thirty minutes later, Poz informed Apolinar that the "boys [are] doing what they're doing," which indicated to Detective S. that "the marijuana [was] being examined, reweighed and the . . . transaction [was] actually in progress." Detective S. believed this correlated with what was happening on surveillance.

¶12 In a later call, Amaya informed Apolinar that the "old man . . . will need more later on tomorrow [because] [t]hey gave me back three cars."<sup>2,3</sup> Detective S. testified that Amaya told Apolinar that "they returned three pieces [] of furniture," which meant that part of the shipment was "not acceptable" and was "returned or sent back to the source of the supply." Apolinar asked Amaya if the bales "were bad or . . . ugly," which Detective S. opined meant they were of poor quality, and

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<sup>2</sup> Detective S. testified that Poz was referred to as "the black guy" and "the old man" or "the old guy" during conversations. He believed them to be the same person based on the topics of the conversations and the same voice.

<sup>3</sup> Detective S. noted that three cars was equivalent to three bales.

Amaya indicated that the bales "had holes like some that had previously arrived." In a subsequent call between Poz and Apolinar, Poz informed Apolinar that "the ones that had come and got the thing . . . were picked up" by a patrol unit. Detective S. testified that this was in reference to the individuals who brought the marijuana and were transporting it away from the Hughes' residence, and this statement was consistent with what was observed by surveillance. Ricardo Brown was stopped by police after driving a white van away from the Hughes' residence. Five individuals, including Ricardo Brown, were arrested that day. Detective S. believed that police had recovered all the money and drugs through the arrests on February 27. Poz was seen returning to the Orangewood residence in a PT Cruiser. Detective S. stated that Poz was not arrested that day due to security issues, as police did not believe he had any drugs on him at the time and the goal was to recover the drugs and drug proceeds.

¶13 Glendale Police Department Detective P. also testified at the trial. Detective P. conducted surveillance on February 24 of Poz. He drove to the Orangewood residence, where Poz was believed to have lived, and observed "a black male with a brown shirt and dark-colored shorts and sandals outside the residence." Detective P. took photographs of the individual. On February 26, Detective P. observed three males enter Hughes'



residence, one of whom was "[a] black male wearing [a] beige or brown colored baseball cap and a white T-shirt and blue jeans." Detective P. took photos of the three males and also observed them by using his binoculars.

¶14 A man identified as Everton Chantilou was stopped by police on May 1, 2009, driving a PT Cruiser and leaving the Orangewood residence. Another officer informed Detective P. about the traffic stop, and Detective P. obtained Chantilou's driver's license number. Detective P. then compared a motor vehicle photo of Chantilou with the surveillance photos of the black male, known as Poz, taken February 24 and 26, and he concluded it was the same individual. Detective P. also made an in-court identification, stating that Chantilou was the individual he saw while doing surveillance on February 24 and 26, meaning Chantilou was the individual referred to as Poz.

¶15 Other detectives and special agents involved in the investigation also testified at trial. Photographs of Poz and the PT Cruiser, taken during the police surveillance, were admitted into evidence and shown to the jury at trial. In addition, the parties stipulated that the suspected marijuana recovered from the Turney house had a weight of 132 lbs. and the marijuana from a Malibu, a vehicle seen leaving the Hughes' residence, was found to contain suspected marijuana with a weight of 64 lbs.

¶16 On the third day of trial, Chantilou moved for a mistrial, which the court denied. On the fifth day of trial, Chantilou again moved for a mistrial, which the court again denied. On the seventh day of trial, Chantilou renewed his motion for severance and moved for a judgment of acquittal, and the court denied both motions. Following the ten-day trial, the jury found Chantilou guilty on all counts, finding him guilty of illegally conducting an enterprise, conspiracy to commit sale or transportation of marijuana, use of wire communication or electronic communication in drug related transactions, and the sale or transportation of marijuana. The jury also found that two aggravating factors applicable to all counts: (1) that the offenses involved an accomplice and (2) the offenses were committed for the consideration of receipt, or in expectation of receipt, of anything of pecuniary value.

¶17 Chantilou was sentenced to the presumptive terms of three and a half year's imprisonment on count two, two and a half year's imprisonment on count fourteen, and five year's imprisonment and a fine of \$9,200 on count fifteen, with the sentences to be served concurrently. Chantilou received sixty-five days of presentence incarceration credit. Regarding count thirteen, the court suspended imposition of sentence and placed Chantilou on probation for three years, following physical release from prison on the other counts.

¶18 Chantilou timely appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033 (2010).<sup>4</sup>

#### DISCUSSION

¶19 Having considered defense counsel's brief and examined the record for reversible error, *see Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The sentence imposed falls within the range permitted by law, and the evidence presented supports the conviction. As far as the record reveals, Chantilou was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶20 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Chantilou of the disposition of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. Chantilou has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se*

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<sup>4</sup> We cite to the current version of the applicable statutes because no revisions material to this decision have since occurred.

motion for reconsideration or petition for review.

**CONCLUSION**

¶21 The convictions and sentences are affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
JON W. THOMPSON, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
MAURICE PORTLEY, Judge